

A guide to Procurement Routes and Contractual Arrangements

ABSTRACT

A summary of the different procurement routes and contractual arrangements available when commissioning adoption support services and therapies; their pros and cons and what to consider.



**Adoption
England**

regional adoption agencies working together

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Introduction

Adoption support services can be commissioned using numerous different **procurement routes** and **contractual arrangements**. Some of the pros and cons to consider when choosing which to use are set out in this guide. This is not meant to be an exhaustive list and does not replace a project specific options appraisal, which is an essential part of any commissioning process.

What do we mean by Procurement Routes?

In broad terms, procurement includes all the tasks and decisions which secure an external provider to provide what we want, at a price we can afford, from the decision to procure, to signing the contract. It includes both competitive tenders and circumstances where we negotiate with a single provider. It is possible for a mix of procurement routes to be used within one region or local authority e.g. framework and spot purchasing.

What do we mean by Contractual Arrangements?

By contractual arrangements, we mean the different types of written agreements that can be put in place between the **commissioner** (e.g., Regional Adoption Agency; Local Authority) and the **provider** (e.g., independent organisation, voluntary adoption agency, sole trader). This can be a legally binding agreement or more informal and can be between two or more parties.

A legally binding agreement (usually referred to as a contract) creates mutual obligations enforceable by law. It outlines the rights and responsibilities of each party concerning activities like the delivery of goods or services, the payment of money, or a promise to do so in the future. Contracts are enforceable in court, allowing parties to seek legal remedies if one party fails to fulfil its obligations.

Pan-regional commissioning

Adoption England is exploring whether commissioning adoption support services at pan-regional and national level may achieve meaningful change for families. RAAs have come together to form 10 pan-regions, recruiting additional commissioning resource; improve our collective understanding of the need of adoptive families, now and in the future; develop joint commissioning arrangements where it makes sense to do so; and share best practice and increase consistency.

The aim of this work is to enable pan-regions to take a more strategic approach to shaping the market. This will improve quality, leading to positive outcomes for families, ensure value for money is being achieved and encourage innovation based on evidence of need.

An important potential benefit to providers of pan-regional commissioning is reducing the need to navigate multiple processes and inconsistencies in approach.

The complexity and burden of joining multiple frameworks across different regions can be significant. Often, providers need to join multiple contractual arrangements such as frameworks and the

paperwork to complete and maintain this can be huge. This may not always be proportionate for the financial value of the work for providers. The contributing factors can include:

- Lack of centralised system for provider registration, which could reduce this.
- Geographic mismatches between placing authorities and family locations.
- Administrative strain on providers due to fragmented procurement processes.
- Inconsistencies in guidance and communication from RAAs.
- Disproportionate application of contract management and quality assurance processes.

General considerations

Determining which procurement routes and contractual arrangements to use will depend on your commissioning project:

- **Goals:** What are you trying to achieve?
- **Complexity & Scope:** Is it a simple or complex commissioning project?
- **Budget & Cost Controls:** How important are strict cost controls and certainty? Do you have a set budget? Are you seeking to make savings?
- **Timeline:** How quickly does the service need to be commissioned?
- **Risk Allocation:** How will risks be shared between the different parties involved?
- **Quality Requirements:** How important is quality in comparison to cost?
- **Inhouse capacity and capability:** Is the commissioner best placed to deliver the services? Will this make best use of the available resources to achieve the best outcome and value for money?
- **Market Conditions:** What are the available resources and provider availability in the market?

Considerations under the Procurement Act 2023

All commissioning processes must comply with the Procurement Act 2023, which replaces the Public Contracts Regulations 2015.

Whichever procurement routes and contractual arrangements are used, commissioners should ensure that providers are approved through local approval processes and meet required standards. Expectations should be clearly defined, including whether services are commissioned per session or series of sessions.

Other considerations under the Act:

- Ensure publication of relevant notices (e.g., Transparency Notice, Contract Award Notice) on the Central Digital Platform.
- For contracts over £5 million, include KPIs and publish annual performance reports.
- When using Frameworks, consider using Open Frameworks to allow new suppliers to join periodically.

Procurement Routes

Competitive tender process

Description: Under the Procurement Act 2023, there are two competitive tendering procedures: the **Open Procedure** and the **Competitive Flexible Procedure**.

The **Open Procedure** is a single-stage process where any supplier may submit a tender. It is suitable for straightforward procurements where pre-qualification is unnecessary.

The **Competitive Flexible Procedure** allows contracting authorities to design a bespoke, multi-stage process. This may include shortlisting, negotiations, site visits, and presentations. It replaces the previously prescriptive procedures such as the restricted procedure, competitive dialogue, and competitive procedure with negotiation.

Both procedures begin with the publication of a **Tender Notice** on the Central Digital Platform. Authorities must ensure the process is proportionate, transparent, and designed to deliver value for money.

| Pros | Cons |
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| <ul style="list-style-type: none">• Ensures compliance with the Procurement Act 2023 through a fair and transparent process.• Can help achieve best value by testing the market and inviting competitive bids, particularly where there is a known and healthy market and the cost is• Can encourage innovation if the tender is based more on outcomes, inviting providers to propose new and creative service models.• Can include interviews/presentations and young people's or adopter panels in the evaluation stage to enable more robust assessment of quality.• The Open Procedure maximises supplier participation and is simple to administer.• The Competitive Flexible Procedure allows for tailored procurement design, enabling innovation and supplier engagement.• Encourages market engagement and early supplier input through Preliminary Market Engagement (PME) notices. | <ul style="list-style-type: none">• Competitive tendering can be resource-intensive and time-consuming, especially under the Competitive Flexible Procedure.• SMEs may face challenges navigating complex multi-stage processes unless procedures are designed with accessibility in mind.• Requires careful planning and documentation to ensure compliance with transparency and time limit rules.• Not suitable for urgent or immediate service needs due to minimum timeframes (typically 25 days, though can be reduced in specific cases). |

Spot Purchasing

Description: Spot purchases refer to the direct award of a contract usually required when there is an immediate need for a service and involve awarding a contract directly with a provider without any competitive process for a single piece of work. Under the Procurement Act 2023, direct awards must be justified and documented in accordance with the Act’s principles of transparency, equal treatment, and value for money.

Contracting authorities must publish a **Transparency Notice** for direct awards unless the procurement falls under an exemption. The Act encourages authorities to use direct awards sparingly and only where proportionate and legally justified.

Spot purchasing remains a valid route for accessing bespoke or urgent services, such as therapies funded by the Adoption and Special Guardianship Support Fund (ASGSF), but must be supported by a clear rationale and audit trail.

| Pros | Cons |
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| <ul style="list-style-type: none"> ● Enables rapid response to urgent or complex needs. ● Allows families to access highly tailored services that meet specific requirements. ● Supports market diversity by enabling engagement with smaller, local providers. | <ul style="list-style-type: none"> ● Requires contracting authorities to document and justify the award, including publication of a Transparency Notice. ● No guarantee of future work for providers, which may limit market stability. ● Overuse of spot purchasing may undermine competition and value for money. ● Increased risk of legal challenge if the award is not properly justified or documented. ● Each agreement requires bespoke negotiation of terms, conditions, and monitoring, increasing administrative burden. |

Services to be delivered in-house

Description: LAs/RAAs may develop and deliver adoption support services themselves, such as where adoption support practitioners within RAAs directly support families. It may also involve RAAs supporting families by way of multi-disciplinary teams, seconding or contracting in external staff such as specialist health posts. Alternatively, an RAA may pay for services delivered by other departments/services within their host LA for example.

RAAs can develop capacity and productivity models which help to forecast need and response

In some cases, this will involve transferring funding between departments within one organisation or between organisations, which would require some sort of agreement to be entered into between the funding and delivery parties.

| Pros | Cons |
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| <ul style="list-style-type: none"> ● Where adoption support practitioners within RAAs directly support families through delivery of therapeutic interventions, this may be highly valued by families who benefit from sustained relationships and support from one practitioner post adoption. ● Practitioners can benefit through having greater job satisfaction, making the most of their skills and experience, directly supporting families to have positive outcomes. ● LA/RAAs can benefit from greater staff retention and value for money, having to the ability to invest in upskilling staff teams, develop more sustainable funding models and build a body of expertise. ● If internal delivery is fully costed and based on accurate, strategic assessment of need and demand, families should experience more timely access to the right support. ● Any type of agreement used where funding is being transferred from one party to another would clearly state the expectations of both the funder and delivery partner and set out any formal monitoring requirements. | <ul style="list-style-type: none"> ● Internal provision may lead to longer waiting lists if there is a high demand on a service and not enough resource within the RAAs/LAs. It is vital to ensure the true cost of services to be delivered internally have been accurately forecast. ● Could lead to reduced investment in developing the external provider market therefore may lead to fewer providers offering these types of services in the local area. ● Internal provision may not be big enough to deliver all the different types of therapeutic interventions. RAAs/LAs should ensure that they retain an external provider market to build flexibility into their operating model. ● Families would have no choice of the provider they would go with as the only practitioners would be internal to the RAAs/LAs. Unless there is the option of either in-house or external provision ● Agreements for internal funding transfers may lack enforceability, making it difficult to challenge underperformance. |

Contractual arrangements

Framework

Description: A **framework** is defined as a contract between a contracting authority and one or more suppliers that sets out the terms under which future call-off contracts may be awarded. Frameworks can be single or multi-supplier and must include the mechanism for awarding call-offs. Frameworks are generally limited to a maximum of 4 years unless justified by the nature of the goods, services, or works.

The process to call off a framework sometimes involves competition between providers on the framework, where all providers are invited to apply to deliver support for an individual family and then applications are evaluated, usually on the quality of the service offer. However, sometimes, providers can be chosen by practitioners and families based on how well their service offer meets their needs.

Dynamic Purchasing Systems (DPS) are now replaced by **Dynamic Markets**, which are distinct from frameworks. Dynamic Markets must remain open to new suppliers at all times and are not limited in duration.

Frameworks are often divided into ‘lots’ by product or service type, and sometimes by region. This means that providers offering certain kinds of specialist interventions or services, (e.g., DDP or specialist assessments) in a specific geographic location/pan-region, can bid to join the lot that best suits their offer.

| Pros | Cons |
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| <ul style="list-style-type: none"> ● RAAs/LAs and families have the option to choose from a selection of pre-vetted providers on the Framework ensuring a compliant and efficient route to market. ● RAAs/LAs and families are aware of the agreed terms and conditions process which must be complied with, reducing administrative burden at the call-off-stage. ● Providers can agree terms, conditions and price when joining the framework, therefore reducing resources needed to agree new terms and prices for each call off contract. ● Smaller companies or sole traders may be more able to compete with larger organisations as once on the Framework, all providers are equally visible to customers, thereby promoting competition. ● RAAs/LAs and providers can be sure using a framework is a fair, open and transparent process for securing services | <ul style="list-style-type: none"> ● RAAs cover a number of local authorities and depending on the RAA structure, agreement may be needed across the whole RAA, or Frameworks may need to be provided by individual local authorities. ● Families can only select from those providers that have joined the framework, therefore limiting choice. ● Applying to join frameworks can take a lot of resources and it can be hard for providers to navigate the process. There tends to be a lot of information to provide, and the information required can differ for different frameworks. This can deter providers from offering their services in more than one LA or RAA. ● Smaller companies or sole providers may be more disadvantaged than larger ones, as they have less capacity to provide the required information or navigate the formal procurement process. ● Frameworks do not guarantee providers any work or minimum number of referrals. This lack of financial security makes it more difficult for |

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| <ul style="list-style-type: none"> ● RAAs/LAs can save time and money by removing the need to run multiple lengthy and expensive tender processes ● Under an open Framework RAAs/LAs can open the arrangement up to new suppliers, enabling innovation in the market. ● RAAs/LAs can set the same performance monitoring requirements for all providers and can monitor and benchmark performance including annual due diligence checks. | <p>providers to invest in developing their services and offer more competitive prices.</p> <ul style="list-style-type: none"> ● It can be difficult for RAAs/LAs to shape the market with a framework alone because of this lack of financial security and certainty for providers. ● Frameworks involve a considerable administrative burden for RAAs/LAs to put in place and then practitioners must be trained in the call off process, which in itself can be difficult to navigate using an online platform. ● RAAs/LAs must allocate sufficient resource to manage ongoing quality assurance, due diligence and information sharing needs for the framework to ensure it remains effective. |
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Block contract

Description: Block contracts are contractual agreements which may be awarded following a competitive tender process or directly (following a described and signed off process) if only one provider can deliver. These are where an organisation purchases a minimum or maximum volume (e.g. number of referrals, sessions, children) for a set price and then draws down on the agreement to utilise the service. The volume may be based on total contract value or a daily rate with a maximum notional budget.

The contract will also describe waiting times and access and other performance measures which help the model to be delivered in a timely way

Block contracts may be for goods, services of consultancy.

Block contracts are commonly used where demand is predictable and funding is secured in advance. They must include performance measures, access criteria, and monitoring arrangements.

| Pros | Cons |
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| <ul style="list-style-type: none"> ● Block contracts allow for meaningful and effective partnership working and relationship building between RAAs/LAs and providers. ● It may be easier and quicker for families to access the service as RAAs/LAs or pan-region already have an agreement with a provider in place where access and waiting times are described. ● Economies of scale through buying in bulk may result in better value for money for RAAs/LAs and pan-regions. ● Costs are agreed and fixed at the outset ● Less reliance on spot purchasing for individual packages of support should result in less work for practitioners in procuring contracts and free them up to directly support families and quality assure services with external providers. ● RAAs/LAs and providers can focus more on service development and continuous improvement, particularly with longer-term contracts. | <ul style="list-style-type: none"> ● Families may be offered a more generic service and have less choice for their support due to the restrictions within the set contract terms. ● Families have little to no choice as to the provider they wish to go with as they must go with the provider who the RAAs/LAs hold the contract with. ● RAAs/LAs need to have some mechanism to monitor the usage of the block contract to know if they are under-utilising or if they will need more. ● Block contracts are not really suitable or possible where funding is not secured in advance such as through the ASGSF where individual applications must be made. |

Grant agreement

Description: Used by public sector bodies for funding projects undertaken by public, private or third sector organisations. Under a grant agreement, the funder makes a payment to the recipient for a specific purpose but the activities undertaken with the grant money are not for the direct benefit of the funder.

Funding devolved to Adoption England by government comes in the form of a grant and likewise, tends to be further devolved to RAAs and pan-regions by Adoption England using Grant Agreements.

Under the **Procurement Act 2023**, grant agreements are generally considered **exempted contracts** and are not subject to the rules governing covered procurement, provided they meet the criteria outlined in **Schedule 2** of the Act.

While public procurement rules do not apply, contracting authorities must still ensure that grants are awarded in line with principles of transparency, proportionality, and public interest. Competitive processes may be used voluntarily to ensure fairness and value for money.

| Pros | Cons |
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| <ul style="list-style-type: none"> ● The grant agreement will specify how outcomes can be achieved. Providers have the autonomy to decide how they wish to achieve the objectives set out in the grant agreement. ● There is less resource required from RAAs/LAs to monitor the grant agreement, taking less resources. ● Enables innovation and tailored approaches to service delivery. ● RAAs/LAs have the ability to recover any misused or surplus funding. | <ul style="list-style-type: none"> ● Providers must ensure they are following the conditions set out in the grant agreement otherwise the grant may be terminated, and funding clawed back. ● Providers must allocate a resource to apply and submit a grant application. ● RAAs/LAs have less control of how grant funding is spent by a provider. The ability to performance manage and understand how much is being delivered can be difficult to specify and monitor. ● Some LAs are reducing the use of grant agreements, preferring to use the other legal routes to procure e.g. tenders, approved provider lists etc ● A competitive grant allocation process can still take a significant resource to set up similar to that of a tender process, although there is far more flexibility as to how applications are evaluations and funding is allocated. |

Other types of informal agreement

Service Level Agreement (SLA)

An agreement negotiated between two parties where one is the funder (customer) and the other the delivery partner (service provider). The SLA records a common understanding about services, priorities, responsibilities, guarantees and warranties. SLAs can be binding contracts but are often used by public sector bodies to set out their relationship in a given project without the intention to create legal relations with internal services or other public sector bodies. Public Procurement regulations do not apply.

An SLA may be suitable where one LA is being funded by another LA to deliver a service.

Collaboration Agreement

It is important to distinguish collaboration agreements from partnership agreements, which may carry different legal and operational implications.

A Collaboration Agreement sets out the arrangements between parties who wish to collaborate or co-operate in some way. The parties may describe this relationship between them vicariously as a contractual joint venture or unincorporated joint venture or a collaboration or co-operation agreement. The agreement defines the scope of each project that is the subject of the collaboration and the contributions, in terms of workforce, financial support, etc. that each party will make towards each project. While traditional procurement regulations may not apply, transparency and fairness principles under the Procurement Act 2023 should still be considered.'

A collaboration agreement may be used by pan-regions when one RAA is to deliver a service for all RAAs to use across the region. They may also be used when one RAA is to undertake a joint procurement, and they manage the contract on behalf of all RAAs in the region.

Memorandum of Understanding (MoU)

Essentially a promise document, an MoU is not a contract and therefore is not intended to be legally binding. Accordingly, if one party does not keep their side of the promise, the affected party cannot take legal action for breach of their obligations or seek damages. Even though expressed not to be legally binding in most respects, an MoU creates a moral commitment. It may be difficult to change key terms once "agreed" in the MoU, which could significantly affect a party's bargaining power at a later stage. While traditional procurement regulations may not apply, transparency and fairness principles under the Procurement Act 2023 should still be considered.